

**Ordinance No. 07-004**

**An ordinance amending the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, General Provisions, Section 1.02, Administration, relative to changing the name of the department to Environmental Services; by the amendment of Section 1.03, Abbreviations, relative to changing the name of the Texas Natural Resource Conservation Commission; by the amendment of Section 1.04, Definitions, relative to the amendment of the definitions of "Director", "NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit", "No Exposure Certification", "Texas Natural Resource Conservation Commission", "TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity", and "Waters of the United States", the addition of the definitions of "TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit", "TPDES permit", "TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities", and "Surface Water in the State", and the deletion of the definition of "Water in the State"; through the amendment of Article II, General Prohibition, Section 2.01(B) relative to the addition of an affirmative defense for four discharges; through the amendment of Article III, Specific Prohibitions and Requirements, Subsection 3.01(B), relative to changing NPDES to TPDES; by the amendment of Subsection 3.01(C)(6), relative to the deletion of non-pressurized; by the amendment of Subsection 3.01(C)(15), relative to dechlorination; by the addition of Subsection 3.02(I), relative to adding reference to Subdivision Rules; through the amendment of Article IV, Storm Water Discharges from Construction Activities, by the amendment of Section 4.01, relative to the addition of the requirement to comply with the Design Criteria Manual; by the amendment of Subsection 4.02(A), relative to changing the reference from waters of the United States to surface water of the State; by the amendment of Subsection 4.02(B), relative to the addition of the**

requirement to perform maintenance and to maintain documentation; by the amendment of the title of Section 4.03, Management Plan Submittal and Review for Disturbances of Less than Five Acres; by the amendment of Subsection 4.03(A), relative to changing from five acres to one acre; by the amendment of Subsection 4.03(B), relative to allowing more than a Professional Engineer to certify a Storm Water Pollution Prevention Plan; by the amendment of Subsection 4.03(E), relative to clarification of pollutants; by the amendment of Section 4.04, relative to changing the title of the section and changing from five acres to one acre; through the amendment of Article V, Storm Water Discharges Associated with Industrial Activity, by the amendment of Subsection 5.01(B), relative to changing NOC to NOI; by the amendment of Subsection 5.01(E), relative to changing TNRCC to TCEQ; by the amendment of Subsection 5.04(C), relative to changing TNRCC to TCEQ; by the amendment of Section 5.07, relative to formatting of table; through the amendment of Article VI, Compliance Monitoring, by the amendment of Section 6.02, relative to changing department names; through the amendment of Article VII, Reports of Violations, by the amendment of Subsection 7.01(B), relative to changing department name from Engineering Services to Environmental Services; by the amendment of Subsection 7.01(D)(2), relative to changing department name from Engineering Services to Environmental Services; by the amendment of Subsection 7.01(E), relative to changing department name from Engineering Services to Environmental Services; providing for a fine of up to \$2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Storm Water Pollution Control" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article I, General

Provisions, Section 1.02, Administration, so that hereafter said section shall be and read as follows:

**Section 1.02 Administration**

The Director of Environmental Services shall implement and enforce the provisions of this Chapter, except for public works construction projects and municipal operations which are administered or controlled by another City department. For public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City, the Director of the City department that is administering, performing, or contracting for the construction project shall implement and enforce the provisions of this Chapter. The Director of each City department shall also implement and enforce the provisions of this chapter for all municipal operations under his/her direction. Any powers granted to or duties imposed in this Chapter upon the Director of Environmental Services or the Director of another City department may be delegated by him/her to other City personnel.

Further, Article I is hereby amended by the amendment of **Section 1.03, Abbreviations**, so that said section shall read as follows:

**Section 1.03 Abbreviations**

The following abbreviations when used in this Chapter shall have the designated meanings:

BMP	-	Best Management Practices
BOD5	-	Five Day Biological Oxygen Demand
CFR	-	Code of Federal Regulations
COD	-	Chemical Oxygen Demand
CSCE	-	Comprehensive Site Compliance Evaluation
EPA	-	U.S. Environmental Protection Agency
HHW	-	Household Hazardous Waste
LPE	-	Licensed Professional Engineer
mg/l	-	Milligrams per liter
MS4	-	Municipal Separate Storm Sewer System
MSGP	-	Multi-Sector General Permit
NOC	-	Notice of Change
NOI	-	Notice of Intent
NOT	-	Notice of Termination
NPDES	-	National Pollutant Discharge Elimination System
pH	-	Measure of Acidity or Alkalinity
POTW	-	Publicly Owned Treatment Works
PST	-	Petroleum Storage Tank
SWPPP	-	Storm Water Pollution Prevention Plan
TCEQ		Texas Commission on Environmental Quality
TPDES		Texas Pollutant Discharge Elimination System

TSS        -    Total Suspended Solids  
USC        -    United States Code

Further, Article I is hereby amended by the amendment of **Section 1.04, Definitions**, by the **amendment** of the definitions of "Director", "NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit", "No Exposure Certification", "Texas Natural Resource Conservation Commission", "TPDES General Permit" or "TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity", and "Waters of the United States", the **addition** of the definitions of "TPDES General Permit for Storm Water Discharges from Construction Sites" or "Construction General Permit", "TPDES permit", "TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities", and "Surface Water in the State", and the **deletion** of the definition of "Water in the State", so that said definitions shall read as follows:

**"Director"** shall mean the Director of Environmental Services for the City of Arlington, or his/her duly authorized representative, except in the case of public works construction projects that are administered, performed, contracted, or funded (in whole or in part) by the City. In the case of such City public works projects, the term "Director" shall mean the Director of the City Department that is administering, performing, or contracting for the construction project, or his/her duly authorized representative.

**"NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas" or "NPDES General Permit"** shall mean General Permit No. TXG110000 published by EPA in Volume 65 of the Federal Register at page 2165 on January 13, 2000, and any subsequent modifications or amendments thereto, that has been assumed and is now administered by the TCEQ.

**"No Exposure Certification"** shall mean receipt of an NPDES Form 3510-11 or an equivalent form issued by TCEQ related to the TPDES General Permit.

**"Surface Water in the State"** - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

**“Texas Commission on Environmental Quality” or “TCEQ”** shall mean the State of Texas agency by that name, the regional offices thereof, any state department, agency, or commission that may succeed to the authority of the TCEQ, and any duly authorized official of TCEQ or such successor agency.

**“TPDES General Permit” or “TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity”** shall mean TPDES General Permit No. TXR050000 issued by the TCEQ in 2001 as authorized under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

**“TPDES General Permit for Storm Water Discharges from Construction Sites” or “Construction General Permit”** shall mean the Construction General Permit issued by TCEQ on March 5, 2003 as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

**“TPDES permit”** shall mean a permit issued by the TCEQ that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to an individual, group, or general area-wide basis.

**“TPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities”** shall mean General Permit No. TXG110000 published by the TCEQ and as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

**“Waters of the United States” - (from title 40, part 122, section 2 of the Code of Federal Regulations) or “Waters of the U.S.”** means:

- (a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) all interstate waters, including interstate wetlands;
- (c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

- (3) which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) all impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) the territorial sea; and
- (g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Further, Article II, General Prohibition, is hereby amended by the amendment of **Subsection 2.01(B)**, so that said subsection shall read as follows:

- B. It is an affirmative defense to any enforcement action for violation of Subsection A of this section, upon presentation of evidence by the discharger, that the discharge was composed entirely of one or more of the following categories of discharges and is not damaging the environment:
  - 1. A discharge authorized by, and in full compliance with, an NPDES or TPDES permit (other than the NPDES permit for discharges from the MS4);
  - 2. A discharge or flow resulting from fire fighting by the Fire Department;
  - 3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;
  - 4. Agricultural storm water runoff;

5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;
6. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;
7. A discharge or flow from a diverted stream flow or natural spring;
8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
9. Uncontaminated groundwater infiltration (as defined in 40 CFR §35.2005(20)) to the MS4;
10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
12. A discharge or flow from individual residential car washing (external surfaces only);
13. A discharge or flow from a riparian habitat or wetland.
14. Dechlorinated swimming pool water (not filter backwash from a swimming pool or hot tub) that: contains no harmful quantities of chlorine or other chemicals, and has a pH of 6.0 to 9.0, and the flow does not cause flooding or property damage.
15. Air conditioning condensate that is not contaminated.
16. A discharge or flow from cold water (or hot water with prior permission of the director) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance or substance being removed from the surface being cleaned.
17. Other similar occasional incidental non-storm water discharges.

Further, Article III, Specific Prohibitions and Requirements, is hereby amended by the amendment of **Subsection 3.01(B)**, so that said subsection shall read as follows:

- B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard,

the City's TPDES permit, or any state-issued discharge permit for discharges from its MS4.

Further, Article III is hereby amended by the amendment of **Subsection 3.01(C)(6)**, so that said subsection shall read as follows:

6. Any wastewater from a commercial car wash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, with the exception that the exterior of new or used automobiles for sale at a dealership may be rinsed with non-heated potable waters as long as no pollutants (including but not limited to detergent, surfactants, emulsifiers, etc.) enter the MS4;

Further, Article III is hereby amended by the amendment of **Subsection 3.01(C)(15)**, so that said subsection shall read as follows:

15. Any swimming pool or hot tub water that has not been dechlorinated, has a pH of less than 6 or greater than 9, causes flooding, property damage, or damage to the environment;

Further, Article III is hereby amended by the amendment of **Section 3.02**, by the addition of Subsection (I), so that said subsection shall read as follows:

- I. Post construction BMP's as required by the Subdivision Rules and Regulations and the Design Criteria Manual.

Further, Article IV, Storm Water Discharges from Construction Activities, is hereby amended by the amendment of **Section 4.01**, so that said section shall read as follows:

#### **Section 4.01 Goal for Erosion and Sediment Control**

The goal for erosion and sediment control at sites disturbed by construction is achievement of at least the minimum site rating of 0.70 using the site rating system and the implementation of the design standards specified in the Integrated Storm Water Management (iSWM) Design Manual for Construction, North Central Texas Council of Governments, Arlington, Texas, December 2003 or adopted revisions and compliance with the City of Arlington Design Criteria Manual.



Further, Article IV is hereby amended by the amendment of **Subsection 4.02(A)**, so that said subsection shall read as follows:

- A. All operators of construction sites shall use best management practices (BMP) to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with demolition, clearing, grading, excavation, landfilling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES Construction General Permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control. They shall be restored to serve their post-construction function before development or redevelopment activities are completed.

The best management practices used at construction sites may include, but not be limited to, the following measures:

1. Ensuring that existing vegetation is preserved by minimizing the disturbance of areas (using temporary fencing to protect areas if necessary) adjacent to construction areas by equipment parking or material storage.
2. Stabilizing disturbed areas of the site as soon as practicable in those portions where construction activities have temporarily or permanently ceased.
3. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;
4. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;
5. Prevention of the discharge of building materials, including cement, lime, concrete, asphalt and mortar, to the MS4 or surface water in the State;
6. Measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure proper cleanup and disposal of any such spills in compliance with state, federal, and local requirements;
7. Implementation of proper waste disposal and waste management techniques, including covering waste materials, minimizing ground

contact with hazardous chemicals and trash, and installing and maintaining covered receptacles for rubbish and garbage to assure that such waste materials are not blown or carried by rainfall runoff from the site;

8. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices to maintain them in good and effective operating condition; and
9. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to, the following: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

Further, Article IV is hereby amended by the amendment of **Subsection 4.02(B)**, so that said subsection shall read as follows:

- B. Qualified personnel (provided by the operator of the construction site) shall conduct inspections, perform maintenance of controls, and maintain documentation for disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.

Further, Article IV is hereby amended by the amendment of the title of **Section 4.03**, so that said title shall read as follows:

**Section 4.03 Management Plan Submittal and Review for Disturbances of Less than One Acre**

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(A)**, so that said subsection shall read as follows:

- A. The requirements of this Section 4.03 shall not apply to any of the following activities:
1. Any construction activity that results in the disturbance of one or more acres of total land area, or that is part of a common plan of development or sale within which one or more acres of total land area are disturbed, and any other construction activity for which an NPDES or TPDES permit is required for storm water discharges associated with that construction activity. (In such circumstances, the requirements of Section 4.04 apply in lieu of this Section.)
  2. Any public works construction project disturbing less than one acre that is administered, performed, contracted, or funded (in whole or in part) by the City.
  3. Any construction activity, not a part of a larger plan of development of one acre or more, related to the construction, alteration, or addition to a single-family, duplex or four-plex residential structure, or an accessory use to any such structure, where one primary structure is constructed per legal lot and the construction activity does not result in the disturbance of more than 12,000 square feet of total land area.
  4. Any construction incident to repair or maintenance of a utility line (such as for telecommunications, electricity, water, sewer, and natural gas). Construction incident to the laying of new utility lines or replacement of existing lines is not exempted from Section 4.03 by this paragraph.
  5. Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building.
  6. Construction of a fence, but no exemption is granted by this subparagraph for construction of a retaining wall or a fence that may significantly obstruct or change the direction of flow of water.
  7. Any construction activity that the Director expressly finds not to cause, or threaten to cause, any discharge of any harmful quantity of any material associated with construction activity into the MS4 or any other water in the state.

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(B)**, so that said subsection shall read as follows:

- B. Unless within one or more of the exceptions specified in Section 4.03(A) above, all operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, shall prepare and submit the following documents to the Director at least fifteen calendar days prior to the commencement of construction activities (unless, pursuant to Section 4.03(C) below, the Director expressly allows construction to be commenced within a shorter period of time following the document submittal):
  - 1. An identifying notice on a form approved by the Director and to be posted at the site entrance containing the following information:
    - a. The name, address, and telephone number of each operator of the construction activity;
    - b. The name, address, and telephone number of each owner of the construction site;
    - c. The location of the construction site, by street address and legal description; and
    - d. A description of the nature of the construction project.
  - 2. Plans and specifications illustrating and describing the best management practices required by Section 4.02(A) above that will be implemented at the construction site. Such plans and specifications shall be prepared, signed, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site, except in instances of land clearing or land filling disturbing less than 12,000 square feet of land without any existing plans or present intention of erecting a building or other structure on the site.

Further, Article IV is hereby amended by the amendment of **Subsection 4.03(E)**, so that said subsection shall read as follows:

- E. The City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the Director are determined not to control and reduce the discharge of pollutants to include but not limited to sediment, silt, earth, soil, and other materials associated with construction activities to the maximum extent practicable.

Further, Article IV is hereby amended by the amendment of **Section 4.04, Five-Acre Disturbances**, including the amendment of the title of the section, so that said section shall read as follows:

**Section 4.04 One Acre or Greater Disturbances**

All operators of sites of construction activity, including demolition, clearing, grading, excavation, and landfilling activities, that result in the disturbance of one or more acres of total land area, or that are part of a common plan of development or sale within which one or more acres of total land area are disturbed, or who are required to obtain a TPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in Section 4.02.):

- A. Any operator who intends to obtain coverage for storm water discharges from a construction site under the TPDES General Permit for Storm Water Discharges From Construction Sites ("the Construction General Permit") but not an individual permit shall:

For sites five acres and more submit a signed copy of its NOI to the Director of Environmental Services, and to any other responsible City departmental Director, at least two calendar days prior to the commencement of construction activities, or

For sites one acre or more but less than five acres submit a copy of the Site Posting required by the TPDES General Permit.

For storm water discharges from construction sites where the operator changes, a revised Site Posting or NOI as appropriate for the site shall be submitted at least two calendar days prior to when the new operator commences work at the site.

- B. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented prior to the beginning of construction activities in accordance with the requirements of the Construction General Permit or any individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this Chapter and any other city ordinance.
- C. The SWPPP shall be prepared and certified by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site. The signature, date and seal of the Licensed Professional Engineer or other appropriate certification for the professional certifying the plan shall constitute his/her attestation to the best of his/her knowledge that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this

Chapter. The SWPPP shall contain the name, title, and business address of the professional signing the SWPPP, and the date that he/she did so.

- D. The SWPPP shall be updated and modified as appropriate and as required by the NPDES or TPDES permit and this Chapter. Any update or modification to the SWPPP that results in a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States shall be prepared, signed, dated, and sealed by a Licensed Professional Engineer or other professional, approved by the Director, certified in a discipline that includes erosion and sediment control principals appropriate for the site.
- E. The SWPPP shall be prepared and submitted to the Director at least fifteen calendar days prior to the commencement of construction activities.
- F. A copy of any SWPPP that is required by Section 4.04(B) shall be submitted to the City in conjunction with any application for a building permit, demolition permit, early grading release, site development plan approval, and any other City approval necessary to commence or continue construction at the site.
- G. If, upon the Director's review of the SWPPP (or any modification to the SWPPP) and any site inspection that the Director may conduct, the Director determines that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter, the Director may issue an order prohibiting the commencement, or the continuation, of any construction activity at the site. Also, if at any time the Director determines that the SWPPP is not being fully implemented, the Director may similarly issue an order prohibiting the continuation of any construction activity at the site. Any order issued by the Director under the authority of this paragraph may be in the form of a Compliance Order under Section 8.05, an Emergency Cease and Desist Order under Section 8.07, or a Stop Work Order under Section 8.08.
- H. Upon review of the SWPPP and any site inspection that is conducted, the City may deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual NPDES or TPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this Chapter. Also, if at any time the City determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, early grading release, or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.

- I. All owners/developers, contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

- J. The SWPPP, with the Licensed Professional Engineer's signature, seal, and date affixed, and the certifications of owners, developers, contractors and subcontractors required by Section 4.04(I), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.
- K. The operator shall make a copy of the SWPPP and any modification thereto available to the Director and any other authorized City inspector at the construction site upon request (as well as to EPA and state inspectors).
- L. The Director may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual NPDES or TPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this Chapter. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven calendar days of such notification from the Director (or as otherwise provided by the Director), the operator shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested modifications have been made.
- M. The operator shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United

States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be modified to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP. All modifications to the SWPPP shall be signed, dated, and sealed by a Licensed Professional Engineer or other professional, approved by the Director of Environmental Services, certified in a discipline that includes erosion and sediment control principles appropriate for the site, then submitted to the Director within seven calendar days of a change, determination of ineffectiveness (self or City inspection), or effective date of changes in contractor and/or subcontractor.

- N. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen calendar days and within twenty-four hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
- O. Based on the results of the inspections required by Section 4.04(N), the site description and/or the pollution prevention measures identified in the SWPPP shall be modified as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection. All modifications to the SWPPP shall be submitted to the Director within seven calendar days of the date of inspection.
- P. A written report summarizing the scope of any inspection required by Section 4.04(N), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section 4.04(O) above shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES or TPDES permit, and this



Chapter. The report shall be certified and signed by the person responsible for making the report and consistent with the signing requirements of the permit.

- Q. The operator shall retain copies of any SWPPP and all reports required by this Chapter or by the NPDES or TPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.
- R. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this Chapter and by the NPDES or TPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the Director of Environmental Services, and to any other responsible City departmental Director, a NOT that includes the information required for Notices of Termination by Part VIII of the Construction General Permit.
- S. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit to the responsible Director written certification that the site has been finally stabilized. (See definition of final stabilization in this Chapter.) The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the responsible Director has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

Further, Article V, Storm Water Discharges Associated with Industrial Activity, is hereby amended by the amendment of **Subsection 5.01(B)**, so that said subsection shall read as follows:

- B. If the owner or operator of a facility becomes aware of a failure to submit relevant facts or that incorrect information has been submitted, a copy of the signed revised NOI shall be submitted to the Director within fourteen calendar days of the discovery. If relevant information on the NOI or No Exposure Certification changes, a copy of the signed revised NOI shall be submitted within fourteen calendar days of the discovery.

Further, Article V is hereby amended by the amendment of **Subsection 5.01(E)**, so that said subsection shall read as follows:

- E. Upon request by the Director, all owners and operators of any facility that is in non-compliance with the requirements of this Chapter, the NPDES or TPDES General Permit, the No Exposure Exclusion, or any applicable individual NPDES or TPDES permit issued for storm water discharges from the industrial facility,

shall consult with the Director, any other representative of the City, or any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the TCEQ, and/or the City may itself undertake any enforcement action authorized by Articles VIII, X, or XI of this Chapter. Exercise of the City's option for consultation under this Section 5.01(E) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

Further, Article V is hereby amended by the amendment of **Subsection 5.04(C)**, so that said subsection shall read as follows:

- C. Copies of all sampling data and analyses reports required by the appropriate TPDES or NPDES Individual Permit shall be submitted to the Director at the same time that such reports are submitted to the EPA or TCEQ, unless otherwise notified in writing by the Director.

Further, Article V is hereby amended by the amendment of **Subsection 5.07(A)**, so that said subsection shall read as follows:

- A. Upon the effective date of this chapter, no discharge shall contain any of the following hazardous metals in a concentration exceeding the maximum concentrations (in mg/l) of each of the hazardous metals listed below:

<u>Metal</u>	<u>Monthly Average</u>	<u>Daily Composite</u>	<u>Daily Maximum</u>
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

Further, Article VI, Compliance Monitoring, is hereby amended by the amendment of **Section 6.02**, so that said subsection shall read as follows:

#### **Section 6.02 Inspection or Search Warrants**

If the Director, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to

demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Director may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the Director of Community Services, the Director of Environmental Services, the Director of Utilities, the Director of Public Works and Transportation, the Director of Parks and Recreation, and the duly authorized representatives of these City departmental Directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

Further, Article VII, Reports of Violations, is hereby amended by the amendment of **Subsection 7.01(B)**, so that said subsection shall read as follows:

- B. Such citizen reports may be made by telephone, in writing, or in person. A written record of each citizen report to the City will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the Director of Environmental Services or other responsible City official will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

Further, Article VII is hereby amended by the amendment of **Subsection 7.01(D)(2)**, so that said subsection shall read as follows:

- 2. Other instances where pollutants are discharged into the MS4 or waters of the United States by spill, release, illicit connections or other means shall be reported to the Department of Environmental Services/Environmental Management.

Further, Article VII is hereby amended by the amendment of **Subsection 7.01(E)**, so that said subsection shall read as follows:

- E. Both the Operator and the Owner of any commercial or industrial activity which has resulted in a spill or release of hazardous/toxic materials or a substance of a polluting nature is responsible for proper notification of the incident to the appropriate county, state, and federal agency. The reporting of a spill/release to the City of Arlington does not release the Owner or Operator from reporting to appropriate county, state and federal officials.

Thus, dependent on the type of release and the nature of the emergency caused thereby (i.e., life threatening or not), the following agencies, in addition to the

Department of Environmental Services/Environmental Management, are specified to be notified:

1. Hazardous Materials Response Team, City of Arlington Fire Department;
2. City of Arlington Police Department;
3. City of Arlington Department of Transportation/Streets Division;
4. Texas Commission on Environmental Quality;
5. U.S. Environmental Protection Agency; and
6. National Response Center.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand and No/100 Dollars (\$2,000)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

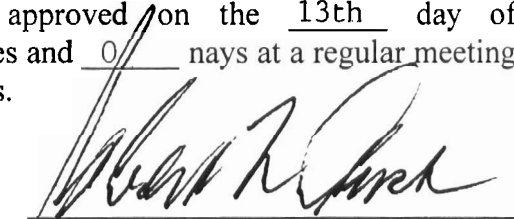
7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 23rd day of January, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 13th day of February, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

  
ROBERT N. CLUCK, Mayor

ATTEST:

  
BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:  
JAY DOEGEY, City Attorney

BY 